

## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS BEAUMONT DIVISION

AMERICAN SOUTHERN	§	
INSURANCE COMPANY,	§	
	§	
Plaintiff,	§	
	§	Civil Action No. 1:09-CV-723
v.	§	
	§	
MICHAEL BUCKLEY, d/b/a	§	
BUCKLEY & SONS PLUMBING,	§	
SHILOH ENTERPRISES, INC.,	§	
CLEVELAND IMAGING AND	§	
SURGICAL HOSPITAL, L.L.C.,	§	
COLONY INSURANCE GROUP,	§	
JOHN DOE INSURANCE	§	
COMPAN(IES) 1-10,	§	
	§	
Defendants.	§	

## MEMORANDUM ORDER ADOPTING REPORT AND RECOMMENDATION ON MOTIONS TO STRIKE AND MOTION TO DISMISS

The Court referred this matter to United States Magistrate Judge Keith F. Giblin at Beaumont, Texas, for hearing and submission of a recommended disposition on case-dispositive motions pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules for the United States District Court for the Eastern District of Texas. The plaintiff American Southern Insurance Company ("ASIC") filed several motions which are pending before the Court.

On September 1, 2010, Judge Giblin issued his Report and Recommendation on Motion to

Dismiss and Motions to Strike [doc. #40]. Judge Giblin recommended that the Court deny ASIC's Rule 12 motion to dismiss and motion to strike Defendant Colony's answer, counterclaim and cross-claim in part, and grant it in part. He also recommended that the Court deny ASIC's Rule 12 motion

to strike defendant Michael Buckley d/b/a Buckley & Sons Plumbing's Answer and Counterclaim.

To date, no party has filed objections to the magistrate judge's proposed findings and recommendation. Accordingly, having reviewed the record and Judge Giblin's report, the Court agrees with the magistrate judge's findings and recommended disposition. The Court **ORDERS** that the *Report and Recommendation* [doc. #40] is **ADOPTED**. Judge Giblin's findings and conclusions of law are incorporated in support of this order.

The Court further **ORDERS** that ASIC's Rule 12 motion to dismiss and motion to strike Defendant Colony's answer, counterclaim and cross-claim [doc. #13] is **GRANTED** in part, and **DENIED** in part. The motion is denied on the Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction; denied on the Rule 12(b)(6) motion to dismiss Colony's breach of contract claim against ASIC; granted with regard to the Rule 12(b)(6) motion to dismiss Colony's statutory claim under the Texas Insurance Code, and denied with regard to the Rule 12(f) motion to strike. It is further **ORDERED** that ASIC's motion to strike defendant Michael Buckley d/b/a Buckley & Sons Plumbing's Answer and Counterclaim filed against ASIC [doc. #22] is **DENIED**.

So ORDERED and SIGNED this 28 day of September, 2010.

Ron Clark, United States District Judge

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